THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.32509 OF 1997
and
WRIT PETITION No.2567 OF 1998

DATED: 07-03-2007

W.P.No.32509 OF 1997

Between:

The Management of Metal Engineers, Balanagar, Hyderabad, represented by its Partner Shyam Agarwal.

.. Petitioner

and

The Presiding Officer, Additional Labour Court-cum-Additional Industrial Tribunal, Hyderabad and another.

.. Respondents

W.P.No.2567 OF 1998

Between:

K. Mutyalu

.. Petitioner

and

The Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad represented by its Chairman and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.32509 OF 1997
and
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COMMON ORDER:

W.P.NO.32509 OF 1997

This writ petition is directed against an award passed in I.D.No.56 of 1996 dated 04.09.1997 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (1st respondent).

It appears, when the services of the 2nd respondent-workman were dispensed with stating that he has attained the age of superannuation on 26.02.1996, he raised an Industrial Dispute stating that his year of birth as declared by him in the relevant records and ESI Card was 1940, and, therefore, the petitioner-management could not have retired him on 26.02.1996 stating that he attained the age of superannuation by that date.

It is the case of the 2nd respondent-workman that in the declaration made by him in ESI Card as well as in the Provident Fund and other records, his year of birth was recorded as '1940'. However, the management had made him to undergo Medical Examination for the purpose of deciding his actual age and the Medical Officer, who examined him, seems to have said that he was aged 57 years as on 25.02.1995. Therefore, he was made to retire on 26.02.1996, which is arbitrary and illegal.

The management filed its counter and resisted the claim petition.

Before the Industrial Tribunal, on behalf of the workman, he himself was examined as W.W.1 and also examined one Pochamma, his mother as W.W.2, and marked Exs.W1 to W5 and Ex.X1, age certificate. On behalf of the management, M.Ws.1 and 2 were examined and Exs.M1 to M15 were marked.

After detailed consideration of the entire oral and documentary evidence on record, the Tribunal held that the workman, who has no definite date of birth, has given declaration on the basis of his parents' information and that was accepted by the employer and the bonafides of the employee were never doubted, and, in such event, it would have been proper if the employer allowed the workman to retire after one year after the ascertainment of age by the Medical Officer, as fixing of such age was only approximate. Therefore, the Tribunal directed the management to pay salary for one year to the workman treating that he was in service till such period. Aggrieved by the same, the management filed this writ petition.

There is no necessity of going into all the details.

It is the definite case of the 2nd respondent-workman that he was born in the year 1940 and, in fact, he gave a declaration to that effect at the time of his initial appointment and the same was recorded in the ESI Card and other service records. Even then, at the fag end of the service, the management entertained a doubt and sent him for medical examination. M.W.2, the Medical Officer, who examined the workman, gave certificate stating that the workman was aged about 57 years as on 25.02.1995. Therefore, the workman was made to retire in the year 1996. But, in the cross-examination, M.W.2 accepted that the age fixed by him was only approximate and it can vary one or two years on either side. Under these circumstances, the Tribunal has rightly come to the conclusion that the workman would have been given the benefit of doubt and he could not have been retired strictly with effect from 26.02.1996, but he could have been retired in the year 1997. Therefore, the Tribunal passed a reasoned award, on the basis of both oral and documentary evidence, and it cannot be said

that it has come to an erroneous conclusion, requiring interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

W.P.No.2567 of 1998

For the reasons recorded above, I see no reason to interfere with the award passed by the Additional Industrial Tribunal-cum-Additional Labour Court. Therefore, this writ petition is also liable to be dismissed and is accordingly dismissed. No costs.

C.V. RAMULU, J

7th March, 2007.
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